

Addressing Sexual Harassment and Sexual Misconduct



*A discussion of intent
and practical application*

Goals

Information



Analysis



Discussion



Awareness



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Foundational Premises

Challenge ↙ *Information vs Attitude*

Standard ↙ *Mercy vs Justice*

Approach ↙ *Benefit of the Doubt*
VS
Assumption of Guilt



Terminology & Definitions

- ❖ *Sex Discrimination*
- ❖ *Sexual Harassment*
- ❖ *Gender-Based Harassment*
- ❖ *Quid Pro Quo Harassment*
- ❖ *Hostile Environment Harassment*
- ❖ *Sexual Advances*
- ❖ *Requests for Sexual Favors*



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Sexual Harassment & the Law: Making Sense of the Statute

History

Harassment on the basis of sex, race, color, religion or national origin is a violation of Title VII of the Civil Rights Act of 1964. Sexual harassment is neither new nor newly illegal; it is simply more publicly discussed.

Statutory Language & Translation

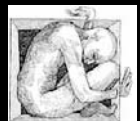
- I. Sexual harassment includes unwelcome advances, requests and verbal or physical conduct of a sexual nature when:
 - A. Submission is explicitly or implicitly a term or condition of employment;
 - B. Employment decisions are based on the submission to, or rejection of such behavior;
 - C. The conduct unreasonably interferes with work performance or creates an intimidating, hostile, or offensive working environment.

Translation:

It must be clear that the advances, requests, comments and contact are unwelcome and:

A. & B. "Going along" is the only way to keep the job, be considered for work opportunities or discretionary benefits;

C. The harassing behavior slows productivity, or makes the job site an unpleasant place based on non-work related, sexual pressures.



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- II. The Equal Employment Opportunity Commission determines sexual harassment has occurred by looking at the entire record and the totality of the circumstances, i.e., the nature of the sexual advances or conduct and the context in which they occurred. The determination of the legality will be on a case by case basis.

Translation:

The Commission will look at everything that happened and will talk to everyone even remotely involved, i.e., current and former co-workers. The Commission will want explicit details of everything allegedly said or done. It will take a lot of time and can be very embarrassing. There are no hard and fast rules; each case or complaint will be investigated and decided individually.

- III. Employers, including labor organizations and employment agencies, are responsible for their acts and acts of their supervisors and agents regarding sexual harassment whether the specific acts were authorized or prohibited, or whether the employer knew or should have known of the unlawful behavior.

Translation:

Sexual harassment that occurs at work exposes the employer to potential liability. When the harassing behavior is by supervisors, the employer is especially vulnerable. Similarly, when the harassing behavior is by union stewards, the union is vulnerable. The legal liability exists even if the employer or union has forbidden such activity and was unaware that it was going on; the risks here are enormous.



Making Sense of the Statute

- IV. In conduct between co-workers, employers are responsible for sexual harassment in the workplace where the employer, its supervisors, or agents knows or should know, unless it, the employer, can show it took immediate and appropriate corrective action.

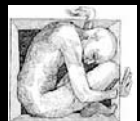
Translation:

In sexual harassment between co-workers, the employer is liable unless it takes steps to stop it. Ignoring this kind of behavior exposes the employer to expensive liability and litigation.

- V. An employer may be responsible for sexual harassment of its employees by non-employees, where the employer, its agents or supervisors, knows or should know of the conduct and fails to take immediate and appropriate corrective action. The Commission will consider the extent of the employer's control and any other legal responsibility the employer has regarding the conduct of the non-employees.

Translation:

Sexual harassment of employees by non-employees, i.e., customers or visitors, exposes the employer to potential liability, where the employer knows or should know of the conduct. The employer should inform the offending non-employee of the policies and standards against sexual harassment in the workplace. The nature of the relationship between the employer and non-employee will be examined by the Commission.



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Making Sense of the Statute

VI. Prevention is the best tool to eliminate sexual harassment. An employer should prevent sexual harassment by affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their rights regarding sexual harassment issues and how to raise those issues, and developing methods to sensitize all concerned.

Translation:

To prevent and limit potential liability for sexual harassment, employers need to take affirmative, i.e., pro-active and positive, action. This training is an example of affirmative, pro-active, positive action.

VII. Where employment opportunities or benefits are granted because of submission to sexual advances or requests for sexual favors, the employer may be liable for unlawful discrimination against others who were qualified for but denied that opportunity or benefit.

Translation:

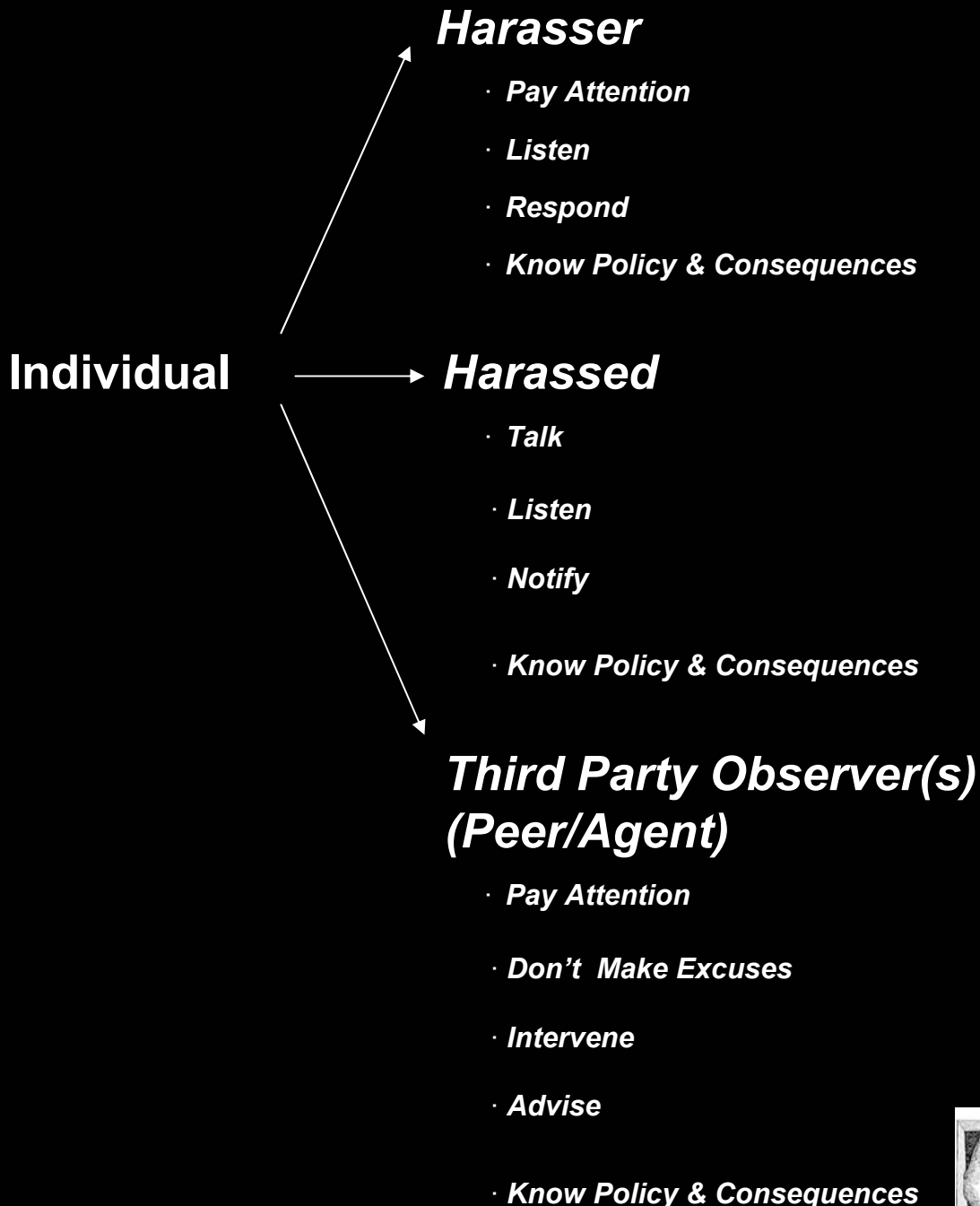
There is no out, no loophole. Even if the person to whom the sexual advances or requests for sexual favors are addressed does not file a complaint, others may. Anyone qualified for an employment opportunity or benefit but was denied it in favor of the sexually involved person has a cause of action. The charging or complaining party need only be "qualified," not "most qualified."



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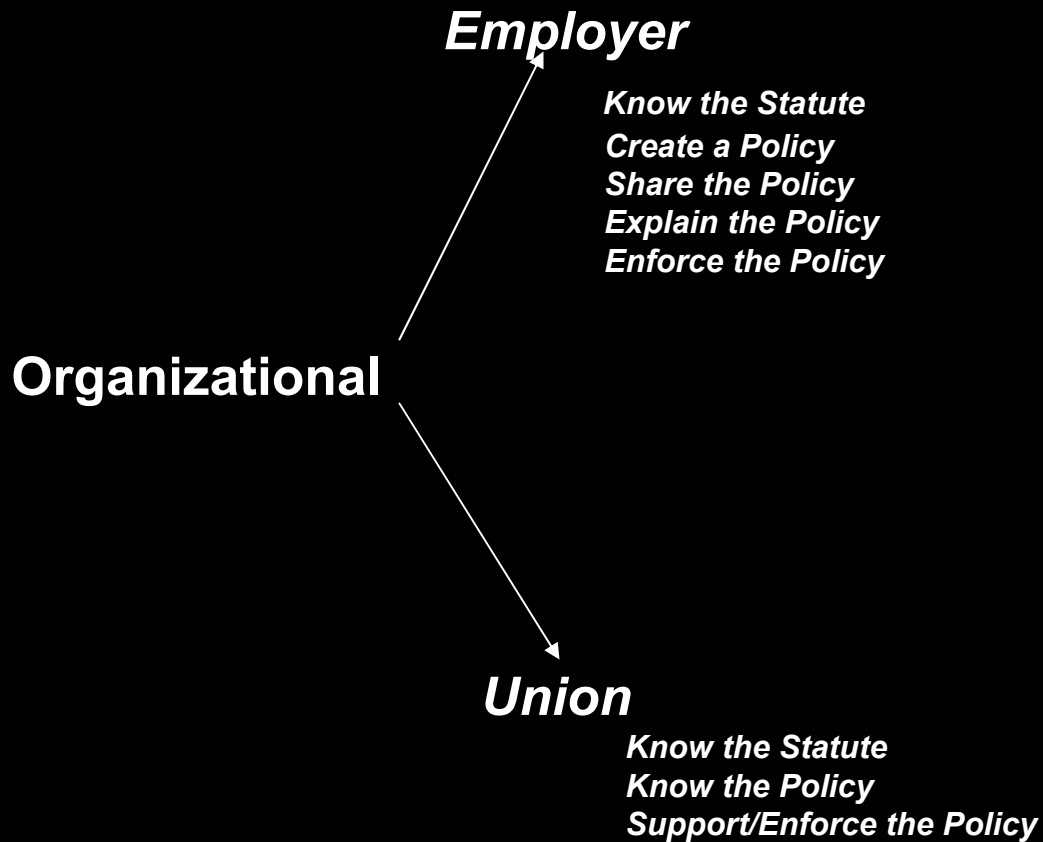
Sexual Harassment Responsibility Model



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Sexual Harassment Responsibility Model



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Sexual Harassment Complaint Procedure

- I. **Tell** Tell the offending person that the conduct is unwelcome, offensive and unacceptable.
- II. **Notify** Notify your supervisor or manager as soon as possible. Alternatively, notify another supervisor, manager or the HR department.
- III. **Advise** Supervisors and managers should immediately advise the HR department, and they will conduct a prompt and impartial investigation.
- IV. **Action** Appropriate corrective action will be taken if harassment has occurred. Corrective action includes disciplinary action up to and including termination of employment.
- V. **Results** The complaining party will be notified of the results of the investigation.



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